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December 14, 1943

W. W. White, Chief Accountant  
Arizona Highway Department  
Phoenix, Arizona

RE: PAYMENT OF PREMIUMS ON INDUSTRIAL COMPENSATION

Dear Sir:

We wrote you on November 30 on the above subject, giving our interpretation of the Supreme Court's decision in the case of Industrial Commission v Highway Commission. Since that time the Supreme Court has modified its original opinion on rehearing and we will ask you to disregard the opinion of November 30 and substitute this in its place.

In the present opinion the Court specifically names the highway employees whose positions are in question with respect to the workmen's Compensation Act.

Briefly stated, the court says that the State Highway Engineer, Deputy State Highway Engineer, Attorney for the Highway Commission, Superintendent of the Motor Vehicle Division, Highway Patrol Superintendent and Chief Clerk of the Motor Vehicle Division are officers and if their salary exceeds \$3600 per year they are not within the Industrial Compensation Act and premiums should not be paid on their salaries. It also specifically says that the Assistant Superintendent of the Highway Patrol, Superintendent of the Motor Carrier Division, Superintendent of Titles and Superintendent of Gas Refunds are not officers and do come within the Compensation act and premiums must be paid upon their salaries regardless of what they receive.

With respect to the Secretary of the Highway Commission their opinion is not so clear but we believe the safest construction of the opinion would be that the secretary is not an officer and is within the Compensation Act and premiums should be paid upon his salary regardless of the amount of the salary.

In the opinion referring to the State Engineer and the Deputy State Engineer the ruling is clearly that these two positions are offices and that these officers will not receive compensation if their salary exceeds \$3600 per year. The court goes further and uses the language "the deputy highway engineer and assistant engineers are appointed by the State Engineer and must possess the same qualifications as such officer and in his absence they have the same powers as State Engineer;" The court therefore puts within the category of officers who do not receive compensation if their salary exceeds \$3600 per year the district engineers and resident engineers.

We think the court has clearly misread the statute (Sec. 59-109). The duties of the State Engineer devolve upon the deputy engineer but there is no duty prescribed for the district engineers and the resident engineers and they do not perform the duties of the State Engineer under any condition.

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There are 2 district engineers and 5 resident engineers, all of whom receive in excess of \$3600 per year. We believe they are clearly within the compensation act regardless of salary received.

We will, of course, be glad to confer with the auditors and the attorneys for the Industrial Commission in working out a definite settlement of past premium payments and of future payments to be made under the Compensation Law.

Very truly yours,

JOE CONWAY  
ATTORNEY GENERAL

*A. R. Lynch.*

A. R. LYNCH  
ASSISTANT ATTORNEY GENERAL

ARL:ecr